

ORDINANCE NO. 2017-049

AN ORDINANCE AMENDING CHAPTER 20 ENTITLED "STREETS, SIDEWALKS AND OTHER PUBLIC WAYS" ARTICLE IV "MANAGEMENT OF THE PUBLIC RIGHTS-OF-WAY" OF THE CODE ORDINANCES OF THE CITY OF GRAPEVINE, TEXAS BY REPEALING THE CURRENT ARTICLE IV "MANAGEMENT OF THE PUBLIC RIGHTS-OF-WAY" OF CHAPTER 20 AND REPLACING IT WITH THE FOLLOWING ARTICLE IV "MANAGEMENT OF THE PUBLIC RIGHTS-OF-WAY" OF CHAPTER 20 AND PROVIDING FOR DEFINITIONS; PROVIDING RIGHT-OF-WAY OCCUPANCY – AUTHORIZATION; PROVIDING FOR REGISTRATION AND CONSTRUCTION PERMITS; PROVIDING FOR CONSTRUCTION AND MAINTENANCE STANDARDS; PROVIDING FOR AS-BUILT PLANS; PROVIDING FOR CONFORMANCE WITH PUBLIC IMPROVEMENTS; PROVIDING FOR IMPROPERLY INSTALLED FACILITIES; PROVIDING FOR RESTORATION OF PROPERTY; PROVIDING FOR REVOCATION OR DENIAL OF PERMIT; PROVIDING FOR APPEAL FROM DENIAL OR REVOCATION OF PERMIT; PROVIDING FOR INDEMNITY; PROVIDING FOR INSURANCE REQUIREMENTS; PROVIDING FOR RESTORATION OF PROPERTY; PROVIDING FOR INSPECTIONS; PROVIDING FOR ABANDONED FACILITIES; PROVIDING THAT UNDERGROUND INSTALLATION PREFERRED; PROVIDING FOR COURTESY AND PROPER PERFORMANCE; PROVIDING FOR DRUG POLICY; PROVIDING FOR TREE MAINTENANCE; PROVIDING FOR SIGNAGE; PROVIDING FOR GRAFFITI ABATEMENT; PROVIDING FOR ALTERNATE MEANS OR METHOD; WAIVER; PROVIDING FOR ORDERLY USE OF THE RIGHT-OF-WAY BY MULTIPLE USERS; PROVIDING FOR A DESIGN MANUAL; PROVIDING FOR PROHIBITED OR RESTRICTED AREAS FOR WIRELESS FACILITIES IN THE RIGHT-OF-WAY; PROVIDING FOR PREFERRED LOCATIONS; PROVIDING FOR ORDER OF PREFERENCE REGARDING ATTACHMENT TO EXISTING FACILITIES; PROVIDING FOR PLACEMENT REQUIREMENTS; PROVIDING FOR CAMOUFLAGUE REQUIRED WHEN POSSIBLE; PROVIDING FOR GENERAL REQUIREMENTS; PROVIDING FOR ELECTRICAL SUPPLY; PROVIDING FOR INSTALLATION AND INSPECTIONS; PROVIDING FOR REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, MAINTENANCE AND REPAIR; PROVIDING FOR REQUIREMENTS UPON ABANDONMENT; PROVIDING FOR GENERAL PROVISIONS; PROVIDING FOR INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS; PROVIDING FOR DESIGN MANUAL UPDATES; PROVIDING FOR ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION; PROVIDING A SAVINGS CLAUSE; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Grapevine finds that the right-of-way, including but not limited to the streets, sidewalks, and utilities located therein are vital to the everyday life of its citizens, visitors and businesses; and

WHEREAS, the City of Grapevine finds that there is limited available space in the right-of-way for the many competing uses of said space; and

WHEREAS, the City is charged with conserving the limited physical capacity of the public rights-of-way which are held in public trust by the City for the benefit of its citizens, visitors, and businesses; and

WHEREAS, the following regulations are necessary to assist in the management of facilities placed in, or over, the public rights-of-way and in order to minimize the congestion, inconvenience, visual impact and other adverse effects that can occur during construction in the rights-of-way, and the manage costs to the citizens resulting from the placement of facilities within the public rights-of-way; and to govern the use and occupancy of the public rights-of-way; and

WHEREAS, the following regulations are necessary to preserve the physical integrity of the streets and highways; and to control the orderly flow of vehicles and pedestrians; and to keep track of the different entities using the rights-of-way to prevent interference between them; and to assist on scheduling common trenching and street cuts; and to protect the safety, security, appearance, and condition of the public rights-of-way; and

WHEREAS, orderly use and management of the City's rights-of-way is required for economic development; and

WHEREAS, the following regulations and necessary to preserve and protect the health, safety and welfare of the City of Grapevine, Texas and its citizens, visitors, travelers, and businesses;

WHEREAS, constitutional and statutory prerequisites for the approval of this ordinance have been met, including but not limited to the Open Meetings Act; and

WHEREAS, the City Council deems the adoption of this ordinance to be in the best interests of the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAPEVINE, TEXAS:

Section 1. That all matters stated hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

Section 2. That the current Chapter 20, entitled "Streets, Sidewalks and Other Public Ways" is hereby amended by deleting the current Article IV "Management of the Public Rights-of-Way" in its entirety and replacing it with a new Article IV "Management of the Public Rights-of-Way" to read as follows:

Chapter 20 - RIGHT-OF-WAY MANAGEMENT

ARTICLE IV. - MANAGEMENT OF PUBLIC RIGHTS-OF-WAY

PART I

Sec. 20-55. - Definitions.

For the purpose of this article, the following words shall be defined herein below:

Abandon and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

Access line means, unless the commission adopts a different definition under Section 283.003, a unit of measurement representing: (i) each switched transmission path of the transmission media that is physically within a public right-of-way extended to the end-use customer's premises within the municipality, that allows the delivery of local exchange telephone services within a municipality, and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale; (ii) each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a public right-of-way connecting specific locations identified by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the municipality; or (iii) each switched transmission path within a public right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the municipality, and in that instance, one path shall be counted for every ten (10) stations served; and may not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer's premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

Ancillary means secondary, supporting, or subordinate.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes means: (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and (B) local amendments to those codes to the extent not inconsistent with this chapter

Applicant means a person submitting an application, proposal or notice to the City to work in the right-of-way.

Application or *proposal* are synonymous for the purposes of this chapter. An "application" or "proposal" means the process by which the applicant submits a request and indicates a desire to be granted a license, permit or franchise for all, or a part, of the City. An "application" or "proposal" includes all written documentation, and official statements and representations, in whatever form, made by an applicant to the City.

Assignment of an authorization or transfer of an authorization means any transaction or action which effectively or actually transfers the authorization or franchise or changes operational or managerial control from one (1) person or entity to another.

Authorization or Agreement to use the Right-of-Way means a negotiated privilege pursuant to an agreement between the City in its discretion and a person, allowing a person to occupy any portion of a street, right-of-way, or easement owned or controlled by the City, and may be for a limited period of time or for a specific purpose.

Certificated telecommunications provider means the same as in Local Government Code, Section 283.002(2) - any entity that has been granted a certificate from the Public Utility Commission of Texas under Chapter 54 of the Texas Utility Code authorizing that entity to provide local exchange telephone service.

City means the City of Grapevine or the designated agent of the City.

City Council or *Council/Franchising Authority* means the City Council for the City of Grapevine, Texas or its lawful successor, which is the governing body for the city.

City Manager shall mean the Grapevine City Manager or designee.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Commission means the Public Utility Commission of Texas.

Communications network means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

Construction means any work above the surface, on the surface or beneath the surface of a public right-of-way, including, but not limited to, installing, servicing, repairing or modifying any facility(s) in, above or under the surface of the public right-of-way, and restoring the surface and subsurface of the public right-of-way, subject to the provisions of Section 20-57(b)(3).

Construction performance bond means any of the following forms of security provided at the owner's option:

- (a) Individual project bond.
- (b) Cash deposit.
- (c) Security of a form listed or approved under State of Texas statutes.
- (d) Letter of credit, in a form acceptable by City.

Construction permit means the permit which, pursuant to this article, must be obtained before an owner may construct in a right-of-way. A construction permit allows the holder to construct facilities in that part of the right-of-way described in such permit.

Consumer price index means the annual revised consumer price index for all urban consumers for Texas, as published by the Federal Bureau of Labor Statistics.

Concealment or Camouflaged means any Wireless Facility or Pole that is covered, painted, disguised, or blended in to its environment or otherwise hidden or kept from sight such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches

DAS or Distributed Antenna System shall be included as a type of Network Node and have the same meaning as "Network Node."

Decorative Pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

Decorative Traffic Signal means a Decorative Pole that has a traffic signal attached.

Department means the department of public works of the City.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Director means the director of the department of public works or successor department of the City or designee.

Emergency means a condition that the City, City Manager, director or department determines; (1) poses a clear and immediate danger to life or health, or an immediate and significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Easement means, refers to or shall include any public easement or other compatible use, whether created by dedication or by the other means, for uses which include public utility purposes or any other purpose whatsoever. "Easement" may include a private easement used for the provision of utilities, depending upon usage.

Facility or *facilities* includes, but is not limited to, any and all cables, pipelines, splice boxes, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or owners, that are located or are proposed to be located in the public rights-of-way.

FCC or Federal Communications Commission means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Fiber able or *Fiber Optic Cable* means a form of communication transmission that uses light to send data, high quality video and sound.

Franchise or Franchise Agreement means the initial authorization, or subsequent renewal granted by the City in order for a person to construct, operate, and maintain a system in all, or part, of the City right-of-way.

Franchise expiration means the date of expiration, or the end of the term of a franchise, permit or license agreement.

Franchise fee means the user fee or charge that the City requires as payment for using the streets, rights-of-way, public ways, and easements of the City.

Gross receipts means any and all compensation which is derived from the operation of the system, and which is attributable to the systems operations within the City as allowed by law.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance

Local means within the geographical boundaries of the City of Grapevine, Texas.

Local exchange telephone service has the meaning assigned by Section 51.002, Utilities Code.

Mayor means the Mayor for the City of Grapevine, Texas.

Macro Tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

Micro Network Node means a network node that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, not longer than eleven (11) inches.

Municipal authorization means the individual grant to use the public rights-of-way issued by the City and accepted by the individual owners in accordance with Ordinance No. 99-30 of the City of Grapevine, Texas, as amended.

Municipally Owned Utility Pole means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

Municipal Park means an area that is zoned, or otherwise designated, by municipal code as a public park for the purpose of recreational activity, and includes means the various properties used for such purpose under the direction, control and supervision of the City.

MUTCD means Manual of Uniform Traffic Control Devices.

Network Node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term: (A) includes: (i) equipment associated with wireless communications; (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and (B) does not include: (i) an electric generator; (ii) a pole; or (iii) a macro tower.

Network Provider means: (A) a wireless service provider; or (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider: (i) network nodes; or (ii) node support poles or any other structure that supports or is capable of supporting a network node.

Node Support Pole means a pole as defined by Chapter 284 of the Texas Local Government Code.

Owner means any person who owns any facility or facilities that are or are proposed to be installed or maintained in the public rights-of-way. Included within this definition is the owner's contractor, subcontractor, agent or authorized representative.

Park has the same meaning as "Municipal Park".

Permit or *Permit to construct* means a permit to perform construction in accordance with this article.

Person means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, excluding the City, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Pole means a service pole, municipally owned pole, node support pole, or other utility pole, and shall include network node support pole.

Provider has the same meaning as "Network Provider".

PROWAG means Public Right-of-Way Accessibility Guidelines.

Restore or *Restoration* means the process by which a right-of-way is returned to a condition that is equal to or better than the condition that existed before construction.

Right-of-Way, Public Way or Public Right-of-Way or Public Rights-of-Way or Rights-of-Way or Right-of-Way means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the City (including any street, as defined, which is acquired by eminent domain) for the purpose of public travel and shall include other easements or rights-of-way now or hereafter held by the City (including any easements or rights-of-way acquired by eminent domain) which shall, with their proper use and meaning, entitle the City or utility provider, with proper authorization, to use thereof for the purpose of installing or transmitting utilities over poles, wires, cable, conductors, ducts, conduits, viaducts, manholes, amplifiers, appliances, attachments, and other property as may ordinarily be necessary.

The term does not include a private easement or the airwaves above a public right-of-way with regard to wireless telecommunications.

Service Pole means a pole, other than a Municipally Owned Utility Pole, owned or operated by a municipality and located in a Public Right-of-Way, including: (A) a pole that supports traffic control functions; (B) a structure for signage; (C) a pole that supports lighting, other than a Decorative Pole; and (D) a pole or similar structure owned or operated by a municipality and supporting only Network Nodes.

Small Cell shall be included as a type of Network Node and have the same meaning as "Network Node".

State means the State of Texas.

Street means only the portion of the Right-of-Way with a specially prepared surface used for vehicular travel, which surface may be concrete, blacktop or other material commonly used to prepare a surface for vehicular travel, and is limited to the area between the inside of the curb (when there is a curb) to the inside of the opposite curb, and does not include the curb area or the area between the two parallel edges of the surface used for vehicular travel where there is no curb. Right-of-Way includes the sidewalks and utility easements and Street does not include a sidewalk or utility easement. A Street does not include the curb, sidewalk, ditch, if any, present either at time of permitting or if added later.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

Thoroughfare shall have the same meaning as "Street".

TMUTCD means the Texas Manual of Uniform Traffic Control Devices.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport Facility means each transmission path physically within Right-of-Way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for Network Nodes.

U.S.C. means United States Code.

Underground District or *Underground Requirement Area* or *Underground Area* means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, or other public or private restrictions, that prohibit installing aboveground structures in a Public Right-of-Way.

User means a person or organization that owns, places or uses facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility Pole means a pole that provides: (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or (B) services of a telecommunications provider, as defined by section 51.002 of the Utilities Code.

Voice service means voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

Wireless Service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a Network Node.

Wireless Service Provider means a person that provides Wireless Service to the public.

Wireless facilities means "Micro Network Nodes," "Network Nodes," and "Node Support Poles" as defined in Texas Local Government Code chapter 284.

PART II Right-of-Way Management

Sec. 20-56. Right-of-way occupancy - Authorization.

- (a) Municipal Authorization or Agreement shall be required, except when clearly preempted by state law. Nothing in this ordinance shall be considered to grant authorization to any user. When any state law authorizing right-of-way use is struck down, pre-empted, declared to be invalid or void, in whole or in part, the user relying upon said law for authorization shall seek separate authorization or shall cease using the right-of-way.
- (b) When Municipal Authorization or Agreement is required, permit for construction work may not be submitted until said Authorization or Agreement is obtained.
- (c) Municipal authorization does not extend to the use of any property or facilities other than the right-of-way.
- (d) Municipal authorization does not address or allow the use of third party facilities in the right-of-way.
- (e) This Chapter does not constitute or create authority to place, reconstruct, or alter facilities in, on, or over the public rights-of-way, and said authority must be obtained by separate instrument in accordance with this section or by operation of other laws.

Sec. 20-57. Registration and construction permits.

(a) Registration.

In order to protect the public health, safety and welfare, all owners of facilities in the right-of-way will register annually with the City of Grapevine. Registration and permits will be issued in the name of the person who will own the facilities. When any information provided for the registration changes, the owner will inform the City of Grapevine of the change no more than thirty (30) days after the date the change is made. Registration shall include:

- (1) The name of the owner;**
- (2) The names, addresses and telephone numbers of the contact person(s) for the owner;**
- (3) The names, addresses and telephone numbers of any contractor or subcontractor, if known, who will be working in the right-of-way on behalf of the owner;**
- (4) The name(s) and telephone number of an emergency contact who shall be available 24 hours a day;**
- (5) Proof of insurance and bonds.**
 - a. An owner must provide acceptable proof of insurance in the total amount required by Section 20-72, insurance requirements for permits for construction within public rights-of-way, or make other provisions acceptable to the director or his/her designee.**
 - b. The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.**
 - c. Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than 30 days before canceling, failing to renew, or reducing policy limits. The City reserves the right to review insurance requirements and to reasonably adjust insurance coverage and limits when the City manager determines that changes in statutory law, court decisions, or the claims history of the industry or the applicant, owner or user require adjustment of the coverage.**
 - d. The owner shall file the required original certificate of insurance prior to any commencement of work. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts. The City may accept a certificate of insurance or the City may require another form of legally binding proof of insurance. An insurer has no right of recovery against the City. The required**

insurance policies shall protect the user and the City. The insurance shall be primary coverage for losses covered by the policies. The policy clause "other insurance" shall not apply to the City if the City is an insured under the policy.

- e. Owner shall file an annual surety bond, which will be valid for one full year, from a surety company authorized to do business in the State of Texas in the amount equal to the estimated amount of the cost to restore the right-of-way for the work anticipated to be done in that year, in the event the owner leaves a job site in the right-of-way unfinished, incomplete or unsafe, or make other provisions, in lieu of a bond, as acceptable to the director or his/her designee.
- f. Owner shall file a maintenance bond for twenty-five (25) percent of the cost of restoring the right-of-way for the preceding year. Said bond shall be in force for two years.
- g. The above requirements may be met by utilities with a current franchise, license or municipal authorization if their current franchise, license or municipal authorization adequately provides for insurance or bonds or provides an indemnity in favor of the City.
- h. The above requirements may be waived by the director if the owner submits documentation, in a form acceptable to the City Attorney, that demonstrates the owner has assets in excess of \$20,000,000.00.
- i. Failure to maintain registration requirements. In addition to all other legal penalties, including criminal penalties, failure to register or maintain and update registration information may result in denial of a permit application or removal of facilities.

(b) Construction permits.

- (1) No owner shall perform any construction or installation of facilities in the right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who will own the facilities to be constructed. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.
- (2) Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the department shall be notified in writing within two business days of any construction related to an emergency response; including a reasonably detailed description of the work performed in the right-of-way. An updated map of any facilities that were relocated, if applicable, shall be provided within ninety (90) days.
- (3) The phrase "construction or installation of facilities" does not include the installation of facilities necessary to initiate service to a customer's

property, or repair or maintenance of existing facilities unless such repair or maintenance requires the breaking of pavement, excavation or boring. The closure of traffic lanes or sidewalks during peak traffic periods between 7:00 a.m. to 9:00 a.m., and 4:30 p.m. to 6:30 p.m. on weekdays or for more than two hours during any non-peak traffic period shall also require a permit.

- (4) The permit shall state to whom it is issued, location of work, location of facilities, dates and times work is to take place and any other conditions set out by the director or his/her designee. If the owner fails to act upon any permit within 90 calendar days of issuance, the permit shall become invalid, and the owner will be required to obtain another permit.
- (5) The person requesting a permit will provide the director or his/her designee with documentation in the format specified by the department, at the time of permit submittal, describing:
 - a. The proposed location and route of all facilities to be constructed or installed and the owner's plan for right-of-way construction.
 - b. Engineering plans, which will be on a reasonable scale, acceptable to the department.
 - c. Detail of the location of all right-of-way that owner plans to use.
 - d. Detail of all existing city utilities in relationship to owner's proposed route.
 - e. Detail of what owner proposes to install, such as pipe size, number of ducts, valves, etc.
 - f. Detail of plans to remove and replace asphalt or concrete in streets in accordance with Exhibit "A", standard specifications and details for restoration within public rights-of-way.
 - g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth located in public right-of-way.
 - h. Typical details of manholes and/or handholes owner plans to use or access.
 - i. Complete legend of drawings submitted by owner.
 - j. If paper copies are required, three (3) sets of engineering plans must be submitted with permit application.
 - k. The name, address and phone number(s) of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.
 - l. The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way, and the dates and times work will

occur, all of which (methods, dates, times, etc.) are subject to approval of the director or his/her designee.

- m. A statement that the requirements of Section 20-63(a)(5) are met.
 - n. A traffic control plan approved by the City Manager, which shall specify the traffic control measures to be provided, SWPPP, and trench safety plan may also be required based on the proposed scope of work. An approved traffic control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.
 - o. No projecting attachments shall be less than eight (8) feet above the ground, if not projecting toward the street. If an attachment is projecting toward the street, the attachment shall be installed no less than sixteen (16) feet above the ground.
 - p. Any proposed work shall not cause any interference with City public safety radio system, traffic signal light system or other City communications systems or components, regardless of whether or not a permit is required. The right-of-way user shall provide evidence in a form acceptable to the City that the proposed installation will be compatible with said City systems and will not cause any interference with the City public safety radio system, traffic signal light system or other City communications systems or components. No installation shall be allowed to be installed or to remain in the right-of-way that causes any such interference.
 - q. The plans shall demonstrate that all federal and state laws and City ordinances will be obeyed, and that all sections of this Chapter, including Part II "Design Manual" will be complied with as applicable. Construction in right-of-way adjacent to a school shall be required to follow all state law requirements, including the requirements in the Educational Code regarding work on school grounds, including but not limited to Chapters 21 and 22, as applicable.
- (6) All construction and installation in the right-of-way shall be in accordance with the permit for the facilities. The director or his/her designee shall be provided access to the work and to such further information as he or she may reasonably require to ensure compliance with the permit.
 - (7) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection at all times when construction or installation work is occurring.
 - (8) All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the owner may request an extension from the City Manager. If the request for the extension is made prior to the expiration of the permit, work may continue while the request is pending.

- (9) A copy of any permit or approval issued by federal, state authorities, transit authorities or by a railroad for work in federal or state or railroad right-of-way located in the City of Grapevine shall be provided, if requested by the department. Such permits or approvals shall include, but not be limited to permits from Texas Department of Transportation, Corps of Engineers or Dallas Area Transit Authority.
- (10) A request for a permit must be submitted at least five working days before the proposed commencement of work identified in the request, unless waived by the City Manager.
- (11) Requests for permits will be approved or disapproved by the City Manager within a reasonable time of receiving all the necessary information.
- (12) The City Manager or the owner can request a preconstruction meeting with the construction contractor.

(c) Compensation and fees.

- (1) Municipal right-of-way use shall be compensated as required by the state constitution, state law, franchise, license or other agreement.
- (2) The City may structure due dates on payments in such a manner so as to be administratively efficient.
- (3) Application fees, as allowed by state law, for work or installations in the right-of-way shall be the fees set by the City Council. Such fees may be set by ordinance, resolution, in the budget or by any other lawful means.
- (4) Failure to pay application fees, or failure of any payment to properly process shall result in the denial or withdraw of a permit.

Sec. 20-58. Construction and Maintenance standards.

(a) The following shall be required when facilities are constructed in the right-of-way, and to the extent applicable, for as long as the facilities remain in the right-of-way:

- (1) The department must be notified 24 hours in advance that construction is ready to proceed by the owner, their contractor or representative. At the time of notification, the owner will inform the department of the number (or other information) assigned from the appropriate one-call notification center. "Notification center" means the same as in section 251.101 of the Texas Utilities Code or a successor section.
- (2) All construction shall be in conformance with all City codes and applicable local, state and federal laws.
- (3) Three-by-three foot informational signs stating the identity of the person doing the work, telephone number and owner's identity and telephone number shall be placed at the location where construction is to occur 48 hours prior to the beginning of work in the right-of-way and shall

continue to be posted at the location during the entire time the work is occurring. An informational sign will be posted on public right-of-way 100 feet before the construction location commences and each 300 feet thereafter, unless other posting arrangements are approved or required by the City Manager.

- (4) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.
- (5) Lane closures on major thoroughfares will be limited to between 9:00 a.m. and 4:30 p.m. unless the City Manager grants prior approval. Arrow boards will be required for lane closures on all arterials and collectors, with all barricades, advanced warning signs and 36-inch reflector cones placed according to the Texas Manual on Uniform Traffic Control Devices. A lane closure or traffic control plan must be filed and approved prior to any lane closures, regardless of whether the work being done requires a permit or not.
- (6) Without affecting the legal relationship between the owner and their contractor, owners are responsible for the workmanship of, and any damages by, their contractors or subcontractors. A responsible representative of the owner will be available to the department at all times during construction.
- (7) Owner shall be responsible for storm water management, erosion control and excavation safety measures that comply with city, state and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire-backed silt fencing. Upon request owner may be required to furnish documentation submitted or received from federal or state government.
- (8) Owner or contractor or subcontractor will notify the department immediately of any damage to other utilities, either City or privately owned.
- (9) It is the City's policy not to cut streets or sidewalks; however, when a street or sidewalk cut is required, prior approval must be obtained from the City and all requirements of the department shall be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic, and shall be in accordance with City standard specifications and details for restoration within public rights-of-way
- (10) Installation of facilities must not interfere with City utilities, in particular gravity dependent facilities. Facilities shall not be located over, or within two feet, horizontally or vertically, of any water or sanitary sewer mains, unless approved by the City Manager.
- (11) New facilities must be installed to a depth approved by the department.

- (12) All directional boring shall have a locator place bore marks and depths while the bore is in progress. Locator shall place mark at each stem with paint dot and depth at least every other stem.
- (13) The working hours in the rights-of-way are 7:00 a.m. to 7:00 p.m., Monday through Friday. Work that needs to be performed after 7:00 p.m. Monday through Friday must be approved in advance by the department. No work will be done, except for emergencies, on City holidays. Lane closures on collectors and arterials will not be allowed between 7:00 a.m. and 9:00 a.m., and between 4:30 p.m. and 6:30 p.m. on weekdays or for more than two hours during any non-peak traffic period, unless otherwise approved by the City Manager.
- (14) Persons working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of a geographic information system or the plans of records does not satisfy this requirement.
- (15) Owner will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the department, owner shall verify locations by potholing, hand digging or other method approved by the department prior to any excavation or boring.
- (16) Placement of all manholes and/or handholes must be approved in advance by the department. Handholes or manholes will not be located in sidewalks, unless approved by the City Manager.
- (17) Locate flags shall not be removed from a location while facilities are being constructed.
- (18) When construction requires pumping of water or mud, the water or mud shall be contained in accordance with City of Grapevine ordinances and federal and state law and the directives of the department.
- (19) A person may be required to place certain facilities within the public rights-of-way underground according to applicable City requirements absent a compelling demonstration by the person that, in any specific instance, this requirement is not reasonable, not feasible or it is not equally applicable to other similar users of the public rights-of-way.
- (20) A person shall perform operations, excavations and other construction in the public rights-of-way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the public right-of-way. The City shall waive the requirements of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the City by the person. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. A person shall follow all reasonable construction directions given by the City in order to minimize any such interference.

- (21) All facilities installed in the right-of-way shall be capable of being identified through a GIS shape file or other means as acceptable to the City Manager or designee. Said identification shall be provided at the time of application and shall be visible on the facilities when installed.
- (22) Above ground wires shall be located on only one side of the right-of-way.
- (23) The right-of-way user or contractor must obtain any needed permits for electrical work and provide sealed engineered drawings for conduit size, circuit size, calculations for Amperage, or any other required information. Provider shall be responsible for obtaining any required electrical power service to any installation. Any such electrical supply must be separately metered and must match City infrastructure voltage and shall not require the installation of a separate or new pole. Such meter shall have a ground box.
- (24) Right-of-way users shall complete construction as expeditiously as possible and lane closures or work that inconveniences the traveling public shall be minimized. Lane closures shall not last longer than four (4) hours, unless a different period of time is shown on the permit. A traffic control plan is required for all lane closures, regardless of whether a permit is required.
- (25) Right-of-way work shall be completed in the amount of time shown on the permit; but if no completion time is shown on the permit the work shall be complete in not more than six (6) months. If no time is shown for permit expiration, the permit shall expire not later than six (6) months from the date it was issued.
- (26) All right-of-way work and facilities installed shall be done in a good workman like manner; shall meet all applicable codes; shall be maintained and kept in good repair and shall be aesthetically pleasing.
- (27) All efforts shall be made to avoid or minimize negative visual impact to the surrounding area and to enhance the safety requirement for vehicles and pedestrians, particularly in areas where small children or other vulnerable members of the population may be located.
- (28) Installations which require ancillary ground equipment with a footprint of twenty-five (25) square feet or more shall be spaced at least 300 feet apart.
- (29) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.
- (30) A statement that the requirements of Subsection 20-8 "Registration" are met.
- (31) A traffic control plan, which shall specify the traffic control measures to be provided, SWPPP, and trench safety plan may also be required based on the proposed scope of work. An approved traffic control plan shall be

required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.

- (32) A traffic control plan approved by the City Manager, which shall specify the traffic control measures to be provided, SWPPP, and trench safety plan may also be required based on the proposed scope of work. An approved traffic control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.
- (33) Any proposed work that involves the installation of facilities shall not cause any interference with City public safety radio system, traffic signal light system or other City communications systems or components, regardless of whether or not a permit is required. The right-of-way user shall provide evidence in a form acceptable to the City that the proposed installation will be compatible with said City systems and will not cause any interference with the City public safety radio system, traffic signal light system or other City communications systems or components. No installation shall be allowed to be installed or to remain in the right-of-way that causes any such interference.
- (34) All facilities installed in the right-of-way shall be in earth tone colors or in colors that blend with the surroundings, or if on a Service Pole or Municipally Owned Pole shall match the color and finish of the pole, or must be approved by the City.

- (b) To the extent applicable, the above requirements shall continue during the entire time that the installed facilities remain in the Right-of-Way.

Sec. 20-59. As-built plans.

- (a) Right-of-way users will provide the City Manager with as-built plans within 90 days of completion of facilities in the right-of-way. The plans shall be provided to the City with as much detail and accuracy as required by the director. All the requirements specified for the plans submitted for the initial permit, as set forth in Section 20-57 shall be submitted and updated in the as-built plans. The detail and accuracy will concern issues such as location, size of facilities, materials used, and any other health, safety and welfare concerns. The detail will not include matters such as capacity of lines, customers, or competitively sensitive details. Submittal of "as-built plans" shall be in digital format but shall include one set of plans in a paper format.
- (b) This requirement, or portions of this requirement, may be waived by the director of public works for good cause.

Sec. 20-60. Conformance with public improvements.

- (a) Whenever by reasons of widening or straightening of streets, water or sewer line projects, traffic signal construction or reconstruction, or any other municipal or public works projects, (including, but not limited to, install or improve storm drains, water lines, sewer lines, etc.) it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform the underground or overhead facilities of an owner to another part of the right-of-way, such alterations shall be made by the owner of the facilities at their expense within the time limits set by the City Manager working in conjunction with the owner of the facilities, or if no time frame can be agreed upon, within ninety (90) days from the day the notice was sent to make the alterations, unless a different schedule has been approved by the City Manager. Facilities not moved after ninety (90) days or within the approved schedule, as same may be extended from time to time, shall be deemed abandoned after thirty (30) days notice, and any costs incurred in moving or removing said facilities shall be borne by the owner.
- (b) An owner may trim trees in or over the public rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and the International Society of Arboriculture. Should the owner, its contractor or agent, fail to remove such trimmings within 24 hours, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the owner shall promptly reimburse the City for all costs incurred within thirty (30) calendar days.
- (c) An owner shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures. The owner shall temporarily remove, raise or lower its aerial facilities within five working days of receiving a copy of a permit issued by the City. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

Sec. 20-61. Improperly installed facilities.

- (a) Any owner doing work in the City right-of-way shall properly install, repair, upgrade and maintain facilities.
- (b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
 - (1) The installation, repair, upgrade or maintenance endangers people or property;

- (2) The facilities do not meet the applicable City codes;
- (3) The facilities are not capable of being located using standard practices;
- (4) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the department or the plans approved by the department.
- (5) Facilities or construction in regard to placement of said facilities that remains incomplete or hazardous after construction work is finished or time for completion has passed, including but not limited to holes in paved areas or ground, handholes or manholes that are improperly sealed, and broken equipment or any other incomplete or hazardous condition.
- (6) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the City Manager.

- (c) Facilities will be considered improperly installed if said facilities utilize radio frequencies which cause any interference with City public safety radio system, traffic signal light system or other communications components or if said facilities interfere with city systems in any manner.

Sec. 20-62. Restoration of property.

- (a) Owners shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Restoration must be approved by the department.
- (b) Restoration must be made within five working days of completion of trench backfill for a length of 300 feet, or within the limits of one city block, unless otherwise approved by the City Manager. If restoration is not satisfactory and performed in a timely manner, after written notice, then all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any future permits until all restoration is complete.
- (c) Upon failure of an owner to perform such restoration, and five days after written notice has been given to the owner by the City, and in the event restoration has not been initiated during such five-day period, the City may repair such portion of the public rights-of-way as may have been disturbed by the owner, its contractors or agents. Upon receipt of an invoice from the City, the owner will reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.
- (d) If the City determines that the failure of an owner to properly repair or restore the public rights-of-way constitutes a safety hazard to the public, the City may

undertake emergency repairs and restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances. An owner shall promptly reimburse the City for all costs incurred by the city within 30 calendar days from the date of the City invoice.

- (e) Should the City reasonably determine, within two years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet existing standards of the City, an owner shall perform such additional restoration work to the satisfaction of the City, subject to all city remedies as provided herein.
- (f) Restoration must be to the reasonable satisfaction of the department. The restoration shall include, but not be limited to:
 - (1) Replacing all ground cover with the type of ground cover damaged during work to a condition equal to or better either by sodding or seeding, or as directed by the department;
 - (2) Installation of all manholes and handholes, as required;
 - (3) Backfilling all bore pits, potholes, trenches or any other holes shall be completed daily, unless other safety requirements are approved by the department. Holes with only vertical walls shall be covered and secured to prevent entry by children. If bore pits, trenches or other holes are left open for the continuation of work, they shall be fenced and barricaded as approved by the department;
 - (4) Leveling of all trenches and backhoe lines;
 - (5) Restoration of excavation site to City specifications;
 - (6) Restoration of all landscaping, ground cover, and sprinkler systems.
- (g) All locate flags shall be removed during the clean-up progress by the owner or his/her contractor at the completion of the work.

Sec. 20-63. Revocation or denial of permit.

If any of the provisions of this article are not followed, a permit may be revoked by the City Manager or designee. If a person has not followed the terms and conditions of this article in work done pursuant to a prior permit, new permits may be denied or additional terms required.

If a permit is denied upon initial submission for incompleteness or for an issue which is capable of correction, the applicant may complete or correct the application and resubmit the application. Applications not resubmitted within thirty-one (31) calendar days shall be considered withdrawn.

Sec. 20-64. Appeal from denial or revocation of permit.

Appeal from denial or revocation of permit or from the decision of the City Manager shall be to the city council. Appeal shall be filed with the City Secretary within five days from the date of the decision being appealed.

A denial or revocation will be upheld unless a person can show that there is an error and that the person was following all of the requirements of this Article and all right-of-way engineering requirements.

Sec. 20-65. Indemnity.

(a) Except as to certificated telecommunications providers, each owner placing facilities in the public rights-of-way shall agree to promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses; (1) for the repair, replacement, or restoration of City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of the owner's acts or omissions; (2) from and against any and all claims, demands, suits, causes of action, and judgements for: (a) damage to or loss of the property of any owner (including, but not limited to the owner, its agents, officers, employees and subcontractors, and the City's agents, officers, employees, and third parties); and/or: (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any owner (including, but not limited to the agents) arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the owner, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.

(b) This indemnity provision shall not apply to any liability resulting from the negligence of the City, its officers, employees, agents, contractors, or subcontractors.

(c) The provisions of this indemnity are solely for the benefit of the city and not intended to create or grant any rights, contractual or otherwise, to any other owner or entity.

Sec. 20-66. Insurance requirements.

(a) Insurance required.

(1) All right of way users, including those who own facilities, shall obtain and maintain insurance in the amounts reasonably prescribed by the City with an insurance company licensed to do business in the State of Texas reasonably acceptable to the City. Right-of-Way users shall maintain the amounts required of applicants at all times. Prior to construction, an applicant must provide, and users must maintain,

acceptable proof of liability insurance in the total amount of six million dollars (\$6,000,000); one million dollars (\$1,000,000) primary plus five million dollars (\$5,000,000) umbrella or other provisions as acceptable to the City Manager. The City reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the City Manager determines that changes in statutory law, court decisions, or the claims history of the industry or the person require adjustment of the coverage.

- (2) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards and Worker's Compensation as required by law.
- (3) Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.
- (4) For purposes of this section, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the person in those instances where the state does not issue such letters, which provide the same coverage as required herein. However, for the City to accept such letters, the person must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the city, based on financial information requested by and furnished to the city.

(b) All right-of-way users shall furnish, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this section to the City, unless the City requires another form of legally binding proof of insurance. If the City requests a deletion, revision or modification, a person shall exercise reasonable efforts to pay for and to accomplish the change.

(c) An insurance certificate shall contain the following required provisions:

- (1) Name the City and its officers, employees, board members, and elected representatives as additional insureds for all applicable coverage;
- (2) Provide for thirty (30) days' notice to the City for cancellation, nonrenewal, or material change; and
- (3) Provide that notice of claims shall be provided to the City Manager by certified mail.

(d) All persons utilizing the right-of-way shall file and maintain proof of insurance with the City Manager. An insurance certificate obtained in compliance with this section is subject to City approval. The City may require the certificate to be changed to reflect changing liability limits. A person shall immediately advise the City Attorney of actual or potential litigation that may develop which may affect an existing carrier's obligation to defend and indemnify.

(e) An insurer has no right of recovery against the City. The required insurance policies shall protect the person and the City. The insurance shall be primary coverage for losses covered by the policies.

(f) The policy clause "other insurance" shall not apply to the City if the City is an insured under the policy.

(g) Right-of-Way Users shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by a person must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.

(h) Insurance - Contractor.

(1) Except as otherwise specified, and contractor and subcontractors (of any tier) will be required at their own expense to maintain in effect at all times during the performance of the work, insurance coverages with limits not less than those set forth below with insurers and under forms of policies satisfactory to the City of Grapevine. It shall be the responsibility of the contractor to insure that he and his subcontractors are adequately insured at all times. Failure of the contractor and his subcontractors to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation.

(2) *Certificates of insurance.* Prior to commencing work at the job site, the contractor shall furnish the City of Grapevine with certificates of insurance as evidence that both the contractor and subcontractor have the policies providing the required coverages and limits of insurance are in full force and effect. The certificates of insurance shall state the City as an additional insured where applicable. The certificates shall provide that any company issuing an insurance policy under this contract shall provide not less than thirty (30) days advance notice in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, the contractor shall immediately provide written notice to the City of Grapevine upon receipt of notice of cancellation of an insurance policy or a decision to terminate or alter any insurance policy. All certificates of insurance shall clearly state that all applicable requirements have been satisfied including certification that the policies are of the "occurrence" type. Certificates of insurance for contractors and subcontractor furnished insurance and notices of any cancellations, terminations, or alterations of such policies shall be mailed to Risk Management, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76099.

(3) *Comprehensive general liability.* This insurance shall be an occurrence type policy written in comprehensive form and shall protect the contractor and his subcontractors and the additional insureds against all claims arising from bodily injury, sickness, disease or death of any

person other than the contractor's employees or damage to property of the City of Grapevine or others arising out of the act of omission of the contractor or his subcontractors or their agents or employees or subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage, a (protective liability) endorsement to insure the contractual liability assumed by the contractor and his subcontractors under the section entitled indemnification and completed operations, products liability, contractual liability, broad form property coverage, premises/operations, and independent contractors. Said amounts shall be not less than six million dollars (\$6,000,000) which shall include one million primary per occurrence for bodily injury and two million primary for property damage with five million umbrella.

- (4) *Comprehensive automobile liability.* This insurance shall be written in the comprehensive form and shall protect the contractor and his subcontractors and the additional insured against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability shall not be less than the state required amounts one million dollars, whichever is greater:
- (5) *Workers' compensation and employers' liability.* This insurance shall protect the contractor and his subcontractors and the additional insurers against all claims under applicable state workers' compensation laws. The insured shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provision of a workers' compensation law. This policy shall include an all-states endorsement. The liability limits shall not be less than the statutory limits, and shall include employers' liability of at least \$500,000 for each accident or the statutory limits, whichever is greater and disease policy limit of \$500,000 for each disease for each employee or the statutory limits, whichever is greater.

All state laws concerning reporting shall be followed, including, but not limited to Rule 28 TAC 110.110, relating to reporting requirements for building or construction projects for governmental entities.

Sec. 20-67. Restoration of property.

- (a) Users of the right-of-way shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Restoration must be approved by the City Manager.
- (b) Restoration must be to the reasonable satisfaction of the City Manager and the property owner. The restoration shall include, but not be limited to:

- (1) Replacing all ground cover with the type of ground cover damaged during work or better either by sodding or seeding, as directed by the City Manager;
 - (2) Installation of all manholes and handholes, as required;
 - (3) Backfilling all bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety requirements are approved by the City Manager;
 - (4) Leveling of all trenches and backhoe lines;
 - (5) Restoration of excavation site to City specifications; and
 - (6) Restoration of all landscaping, ground cover, and sprinkler systems.
- (c) All locate flags shall be removed during the clean-up progress by the permittee or contractor at the completion of the work.
- (d) Restoration must be made in a timely manner as specified by approved City schedules and to the satisfaction of City Manager or designee. If restoration is not satisfactory and performed in a timely manner all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any permits not approved until all restoration is complete.
- (e) If a person fails to restore property as set out in this section, the City shall give five (5) days written notice to the person at the address shown on the permit. If the person does not initiate repairs during the five day period, or fails to complete the repairs within thirty (30) days thereafter the City may elect to repair such portion of the right-of-way as may have been disturbed by the person, its contractors, or agents at the cost of the person performing the right-of-way work. These time periods may be shorten or waived in cases of a threat to public health, safety or welfare. Upon receipt of an invoice from the City, the person will reimburse the City for the costs so incurred no later than thirty (30) calendar days from the date of the City invoice.
- (f) Should the City reasonably determine, within three (3) years from the date of the completion of the repair work, that any of the said restoration work failed to meet the existing standards of the City, the person shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies.
- (g) Notwithstanding any of the above sections, if the City determines that the failure of the person to properly repair or restore the right-of-way constitutes a threat to the public health, safety or welfare, the City may undertake emergency repairs and restoration efforts. The City may attempt to provide emergency notice to the person responsible, but is not obligated to do so. The right-of-

way user shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.

Sec. 20-68. Inspections.

The City may perform inspections of any right-of-way work, including installations, maintenance, modifications or any other right-of-way work, whether such work is subject to permit requirements or allowed to be done without a permit. The City may perform visual inspections of any right-of-way work located in the right-of-way as the City deems appropriate without notice. If the inspection requires physical contact with right-of-way work, the City may provide the right-of-way user with notice prior to said inspection. Right-of-way user may have a representative present during such inspection. In the event of an emergency situation, the City may, but is not required to, notify the right-of-way user prior to the inspection. The City may take any needed action to remediate an emergency. The City shall notify the right-of-way user as soon as practical after said remediation.

Sec. 20-69. Abandoned Facilities.

(a) *Duty to remove.* A person that has placed facilities in the right-of-way shall remove said facilities and related equipment when such facilities are abandoned regardless of whether or not it receives notice from the City.

(b) *Time for removal.*

- (1) The City may notify the person that said facilities must be removed immediately when necessary to ensure public health, safety, and welfare.
- (2) If immediate removal is not required, the removal must be completed within the time set forth in the written Notice to Remove from the City and if no time is set out, then within ninety (90) days for the facilities and related equipment being abandoned.
- (3) If the facilities are not removed after the ninety (90) day notice to remove, the City may remove the facilities thirty (30) days after notice of a final finding of abandonment.
- (4) When a person removes, or abandons permanent structures in the right-of-way, the person shall notify the City Manager in writing of such removal or abandonment and shall file with the City Manager the location and description of each facility and ground equipment removed or abandoned.
- (5) The City Manager may require the person to complete additional remedial measures necessary for public safety and the integrity of the right-of-way.

(c) *Deemed abandoned.*

Facilities may be deemed abandoned as set out in this Chapter. Additionally, facilities may be deemed abandoned if:

- (1) A person does not relocate facilities as set out in 20-12 "Conformance with Public Improvements".
- (2) A person does not correct or abate improperly installed facilities as set out in Section 20-13 "Improperly Installed Facilities".

- (3) A person fails to maintain the registration requirements set forth in Section 20-8 "Registration".
- (4) A person utilizing the right-of-way cannot be found or contacted.
- (5) A person utilizing the right-of-way fails to pay the required compensation.
- (6) A person utilizing the right-of-way fails to comply with the requirements of this Chapter after being given due notice of any deficiencies. The notice requirement shall only apply to persons who have maintained the required Registration as set out in Section 20-57 "Registration and Construction Permits" and are capable of being contacted.

Sec. 20-70. Underground installation preferred.

- (a) The underground placement of Facilities is encouraged.
- (b) Facilities shall be installed underground where existing utilities are already underground.
- (c) Underground conduits and ducts shall be installed in the public rights-of-way between the adjacent property line and curb line unless otherwise directed by the City.
- (d) Conduits and ducts shall be installed parallel with the curb line and cross the public rights-of-way perpendicular to the public rights-of-way centerline unless otherwise directed by the City.
- (e) Ducts and conduits shall be installed by trenchless excavation or directional boring whenever commercially economical and practical. Trenchless excavation shall be used to place facilities under paved public rights-of-way centerline unless otherwise directed by the City.

Sec. 20-71. As Built Maps and Records.

User shall maintain accurate maps and other appropriate records of its facilities and equipment as they are actually constructed in the rights-of-way, including, upon request, the use of Auto CAD/GIS digital format. User will provide additional maps to the City upon request.

Sec. 20-72. Courtesy and Proper Performance.

User shall make citizen satisfaction a priority in using the right-of-way. User shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its facilities and related ground equipment in the right-of-way. User's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or designee, User is not interacting in a positive and polite manner with citizens, the City Manager may request User to take all remedial steps to conform to these standards.

Sec. 20-73. Drug Policy.

It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by User's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City Premises is prohibited.

Sec. 20-74. Tree Maintenance.

User, its contractors, and agents shall provide written notice to the City Manager before trimming trees hanging in the right-of-way.

Sec. 20-75. Signage.

User shall post and maintain legible identification its name, location identifying information, and emergency telephone number in an area on a cabinet of a facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City Manager.

Except as required by Laws or by the Utility Pole owner, User shall not post any other signage or advertising on the facilities or equipment.

Sec. 20-76. Graffiti Abatement.

As soon as practical, but not later than fourteen (14) calendar days from the date User receives notice thereof, User shall remove all graffiti on any of its facilities and related ground equipment located in the Right of Way and shall restore to the previous condition or better. The foregoing shall not relieve the User from complying with any City graffiti or visual blight ordinance or regulation.

Section 20-77. Alternate means or method; waiver.

(a) A person may file a request with the City Manager to use alternate means or methods in right-of-way construction or maintenance. In determining whether any requirement under this section may be waived or if an alternate method or means may be used, the City Manager may consider all reasonable factors, including but not limited to:

- (1) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in risk;
- (2) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase of service interruption;
- (3) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in potential for liability for accidents;

- (4) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in construction;
- (5) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in availability of services; or
- (6) to any other unreasonable technical or economic burden.

(b) There shall be no right to receive permission to use an alternative means or method and denial by the City Manager shall be final.

Sec. 20-78. Orderly use of the Right-of-Way by Multiple Users.

- (a) In the exercise of governmental functions, the City has first priority over all other uses of the rights-of-way. Traffic uses shall be considered as the primary use and the City reserves the right to lay sewer, water, gas and other pipe lines or cables and or cables and conduits, and to do underground and overhead work, including attachments, restructuring or changes in aerial or underground facilities in, across, along, over, or under a public street, alley or right-of-way and to change the curb, sidewalks of the grade of streets. Uses should be designed so as to cause the least interference with traffic, including signalization.
- (b) The City shall assign the location in or over the rights-of-way among competing users of the rights-of-way with due consideration to the public health, safety and welfare considerations of each user type, and to the extent the City can demonstrate that there is limited space available for additional users, may limit new users or require removal of abandoned or obsolete facilities, as allowed under state or federal law.
- (c) If the City authorizes abutting landowners to occupy space under the surface of any street, alley or rights-of-way, the grant to an abutting landowner shall be subject to the rights of the previously authorized users of the public rights-of-way. If the City closes or abandons a public right-of-way that contains a portion of a person's facilities, the City may close or abandon such right-of-way subject to the right of the person, provided said facilities have not been abandoned and provided the person is a registered user of the right-of-way.

Sec. 20-79 through 20-100. - Reserved.

PART III. – DESIGN MANUAL

Sec. 20-101. Purpose.

This Design Manual is for maintenance of, siting and criteria for the installation of Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and

related ground equipment and applies to any and all maintenance, siting, installations, collocations, or other placement of, in, over or under the Public Rights-of-Way of Network Nodes, Node Support Poles, Micro Network Nodes, Distributed Antenna System(s), microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284 of the Local Government Code or installed pursuant to an Agreement to use the Right-of-Way or Authorization or installed as may otherwise be allowed by state law.

The City enacts these design requirements and guidelines in order to meet its fiduciary duty to its citizens, and to give assistance and guidance to Network Providers in the safe, aesthetically pleasing, efficient, and timely installation of facilities.

Sec. 20-102. Prohibited or Restricted Areas for Wireless Facilities in the Right-of-Way.

(a) Prohibited: Municipal Parks and Residential Areas.

A Network Provider may not install a new Node Support Pole in the following locations:

- (1) in a Municipal Park; or
- (2) in right-of-way that is adjacent to a street that is:
 - (a) not more than fifty (50) feet wide at average width, measuring vehicular traveled portion only as set out in the definition of "Street" and the measurement does not include intersections and refers only to the main traveled portion measured at mid-block or mid-point between intersections; and
 - (b) adjacent to developed or undeveloped single-family residential lots, other multifamily residential area or land that is designated for residential use by zoning or deed restrictions.
- (3) Construction in right-of-way adjacent to a school is prohibited, unless all contractors, sub-contractors, or other workers follow all statutory requirements in the Educational Code regarding work on school grounds, including but not limited to chapters 21 and 22.

(b) Prohibited: Undergrounding District.

- (1) Above ground structures shall not be installed in an Underground District or Underground Requirement Area, except as provided herein.
- (2) A Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining the appropriate zoning, land use approval or other required approval.
- (3) In addition to areas designated in this ordinance, future areas may be designated from time to time by the City as Underground Required Areas by any means, including but not limited to means such as ordinances, resolutions, or filed plats. If an area is converted from an area that allows overhead lines

to one that prohibits overhead lines, all subsequent installations shall meet the requirements for an Underground District.

- (4) If a location is designated by the City to be Underground Required Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be automatically revoked, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise allowed for the transition of other overhead facilities.

(c) Restricted: Historic District and Design Districts.

- (1) A Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

- (2) Concealment Required

- (a) As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, Concealment measures are required for Network Nodes or Node Support Poles or related ground equipment or any portion of the Nodes, poles, or equipment.
 - (b) Said Concealment measures shall minimize the impact to the aesthetics in a Historic District or Design District.

- (3) Network Provider shall comply with and observe all applicable City, State, and federal laws and requirements, including historic preservation laws and requirements.

(d) Historic Landmarks.

Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, State or Federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit.

- (e) Collocation will not be allowed on decorative poles in any district.

(f) Designated Areas.

- (1) The Council may designate an area as a Historic District, Design District or Underground District at any time.

- (2) Underground District.

Any area that meets the definition of Underground District or Underground Requirement Area shall be considered an Underground District or Underground Requirement Area.. An area does not need to be designated by this Ordinance to be considered to be within an Underground District. Such designation does not require a zoning case. Any area declared to be an Underground District by City Council or any area that meets the definition of

Underground District or Underground Requirement Area shall be subject to all requirements and protections for an Underground District.

(3) Historic District.

- (a) Historic District Number 1 is Main Street Commercial Historic district and is bounded by Northwest Highway, Jenkins Street, Barton Street, and Franklin Street.
- (b) Historic District Number 2 is College Street Residential Historic District and includes properties along north and south of College Street between Ball Street and Dooley Street.
- (c) Historic District Number 3 is D. E. Box Addition Historic District and includes homes along the south side of Wall Street from 728 East Wall Street to 922 East Wall Street; homes along the north and south sides of the 800 and 900 blocks of East Texas Street, homes along the north and south sides of the 800 and 900 block of East Worth Street, homes along the west side of the 200 and 300 blocks of Ruth Street.
- (d) Historic Districts are not limited to those designated above and the City Council may designate an area as a Historic District at any time. An area does not need to be designated by this Ordinance to be considered to be within a Historic District. Such designation does not require a zoning case. Any area declared to be a Historic District by City Council or any area that meets the definition of Historic District shall be subject to all requirements and protections for a Historic District.

(4) Design District

The City Council may designate an area as a Design District at any time. An area does not need to be designated in this Ordinance to be considered to be within a Design District. Such a designation does not require a zoning case. Any area designated by City Council as a Design District or any area that meets the definition of a Design District shall be subject to all requirements and protections for a Design District.

(g) Defense.

It shall be a defense to the above requirements prohibiting or restricting location of facilities in a Park, Residential area, Historic District, Design District or Underground District that the Network Provider obtained advance written approval or waiver of restrictions from the City before collocating new Network Nodes or installing new Node Support Poles or ground equipment in a prohibited or restricted location. In any prosecution herein for such prohibition or violation of any restrictions, it shall be an affirmative defense to have an Agreement with the City that approved such location or waived the applicable restriction.

If an Agreement is granted to locate in a prohibited location, the Network Provider shall be required, as a condition for approval of new Network Nodes or new Node Support Poles in a prohibited location, to install reasonable design or concealment measures for the new Network Nodes or new Node Support Poles. Therefore, any request for installations in a prohibited location, must be accompanied with concealment measures in the permit applications.

The City requests that a Network Provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in all locations of the City.

(h) **Private Deed Restrictions and Property Owners Association Rules**

A Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

(i) **Ground Equipment**

- (1) Ground Equipment shall be minimal and the least intrusive at all sites.
- (2) In order to maximize line of sight at street corners and intersections and minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or street intersection.
- (3) Ground equipment may not be installed at street corners or intersections within a visibility triangle.
- (4) Ground equipment shall not be installed near a driveway.

(j) Each permit application shall designate if the requested area for installation is within one a Residential area, a Municipal Park, an Underground District or Underground Requirement Area or a Historic District or a Design District.

Sec. 20-103. Preferred Location.

(a) The following locations, in the order listed, are the preferred locations for installation of poles or wireless facilities:

- (1) Industrial areas.
- (2) Areas designated by the City as a Highway Rights-of-Way Area, provided that such areas are not adjacent to a Municipal Park, Residential Area, Historic District, Design District or any prohibited area set out above.
- (3) Retail and Commercial areas, provided such areas are not in a prohibited location, such as an Underground District, Design District or Historic District.

(b) In the absence of state law or an Agreement or Municipal Authorization providing otherwise, Network Nodes shall be restricted to Preferred Locations set out in this section.

Sec. 20-104. Order of Preference regarding attachment to existing facilities.

(a) The following shall be the order of preference for the attachment of Network Nodes to existing facilities, beginning with most preferred location and ending with least preferred location. In addition to the preference set out by the City, existing facilities may be owned by third parties and may not be available for attachment of facilities or may require authorization from other parties.

(b) Order of preference from most preferable to least preferable.

- (1) Most preferable – Existing telephone or electrical lines between existing utility poles. Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.
- (2) Preferable – Existing Utility Poles (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.
- (3) Least preferable – Municipal Service Poles, which shall require an agreement with the City. Municipal Service Poles includes (in order of preference):
 - (a) Non-decorative street lights.
 - (b) Traffic signal structures – Network Nodes may only be attached to traffic signal structures when such installation will not interfere with the integrity of the facility and will not interfere with the safety of the public. Any installation of Network Node facilities on any traffic signal structures shall:
 - (i) Be encased in a separate conduit than the traffic light electronics;
 - (ii) Have a separate electric power connection than the traffic signal structure;
 - (iii) Shall not puncture or drill into the structure; and
 - (iv) Have a separate access point than the traffic signal structure.
 - (c) Other municipal service pole use is discouraged.
- (4) New Node Support Poles shall also be least preferred. Collocation shall generally be preferred over new poles. New poles shall not be installed in prohibited areas and shall only be allowed in restricted areas to the extent all requirements are followed or a waiver is granted. Any new poles shall be camouflaged to the extent allowed by law as set out in this Chapter.

(c) Ground equipment should be minimal and the least intrusive.

(d) In the absence of state law or an Agreement or Municipal Authorization providing otherwise, Network Nodes, if allowed, shall be restricted to Most Preferable Locations set out in this section and shall be prohibited in the Least Preferable.

Sec. 20-105. Placement Requirements.

- (a) A Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:
 - (1) obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
 - (2) obstruct the legal use of a public right-of-way by other utility providers;
 - (3) violate nondiscriminatory applicable codes;
 - (4) violate or conflict with the municipality's publicly disclosed public right-of-way management ordinance or this Design Manual.

(5) violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) Network Node facilities shall be installed in accordance with section 20-57 and all other applicable requirements of this Article and this Chapter.

(c) Right-of-Way.

(1) Network Nodes installation shall follow all applicable requirements of this chapter, including Section 20-57.

(2) Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two (2) feet of the outer edge of the right-of-way line.

(3) Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the right-of-way.

(4) No protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

(d) Parks.

For the safety of park patrons, particularly small children, and to allow full line of sights near park property, the Network Provider shall not install Ground Equipment in a right-of-way that is within a Park or within 250 feet of the boundary line of a Park. The Network Provider may request a waiver of the requirement that such equipment not be within 250 feet of a park from the Board of Adjustment.

(e) There shall be no more than one (1) Network Node on any one Pole.

Sec. 20-106. Camouflage Required When Possible.

(a) Camouflage is required by the City when Wireless facilities are allowed, as set forth above, in Design Districts with Decorative Poles or in Historic Districts.

(b) It is the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial or in a designated Highway District area.

(c) Companies shall submit their proposal for camouflage with the permit application.

Sec. 20-107. General Requirements.

(a) Confirmation of non-interference with City Safety Communication Networks.

(1) The Network Provider shall provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other City safety communications components.

(2) It shall be the ongoing responsibility of the Network Provider to evaluate, prior to making application for permit and while Network Nodes remain in the Right-of-Way, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference and any Network Node that causes

destructive interference post-installation shall correct such interference or be removed and shall follow all federal regulations regarding interference.

- (3) Network Nodes shall not be allowed on City's public safety radio infrastructure.

(b) Size Limits.

- (1) Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in this Chapter.
- (2) To the extent authorization is provided by franchise or license, the franchise or license controls.
- (3) To the extent authorization is provided by state law which sets out size limits, the size limits in the state law control.
- (4) If authorization is provided through a state law with no size limits, or other authorization with no size limits, the size limits of this section shall control.
- (5) Unless otherwise provided by state law or Municipal Authorization, License, Franchise or Agreement, the following maximum size limits are applicable (required):
 - (i) Micro Network Node dimensions – Maximum Length: Twenty-four (24) inches; Maximum Width: Fifteen (15) inches; Maximum Height: Twelve (12) inches.
 - (ii) When not otherwise set out in this ordinance or in a Municipal Authorization, the size limits shall not be greater than size limits set forth for structures or equipment in Chapter 284 of the Local Government Code (SB 1004, 85th Regular Session), where applicable. These size limits shall apply when there are no other size limits specified.
 - (iii) Size limits may be reduced when necessary for public health, safety or welfare.

- (c) Size limits provided by state law are only applicable for so long as required by state law. If said state law is found to be repealed, struck down, pre-empted or invalid, in whole or in part, the standards required by the City, either in the Municipal Authorization or an amendment to the Municipal Authorization or the directives of the City or this Chapter, shall be required and such standards shall be subject to individualized review.

(d) Concealment.

The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible.

(e) New Node Support Pole Spacing.

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

(f) Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment already occupies a footprint of twenty-five (25) sq. ft. or more.

(g) Allowed Colors.

Colors shall meet the requirements set out in Section 20-58

(h) If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the City Manager and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall remove the Network Node facilities, Node Support Poles or ground equipment.

(i) Ground Equipment.

- (1) Ground equipment should be minimal and the least intrusive. To minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.
- (2) Ground Equipment near Municipal Parks. For the safety of Municipal Park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install ground equipment in a right-of-way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the City Manager in writing.
- (3) To enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of twenty-five (25) square feet or more.
- (4) Ground equipment shall not be installed in such a manner as to interfere with a sight visibility triangle.

(j) Municipal Service Poles.

- (1) An Agreement shall be required for all installations on Municipal Service Poles and all such installations shall be in accordance with the Agreement.
- (2) Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load.
- (3) Height of attachments:

- (a) All attachments on all Service Poles shall be at least eight (8) feet above grade; and
- (b) If a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground;
- (c) And meet all applicable requirements of State law and this Chapter.
- (4) Installations on all traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with the agreement with the City. Installation of Network Node facilities on any traffic signal structures shall:
 - i. Be encased in a separate conduit than the traffic light electronics;
 - ii. Have a separate electric power connection than the traffic signal structure; and
 - iii. Have a separate access point than the traffic signal structure;
 - iv. Shall not puncture or drill into the structure;
 - v. Shall not be installed on the mast arm; and
 - vi. Meet all other requirements of State law and this Chapter.
- (5) Installations on Street signage:

Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with the Agreement with the City. Installation of Network Node facilities on any street signage structures that has electrics shall:

 - i. Be encased in a separate conduit than any City signage electronics;
 - ii. Have a separate electric power connection than the signage structure;
 - iii. Have a separate access point than the signage structure; and
 - iv. Meet all other requirements of State law and this Chapter.
- (k) Certification.
 - (1) Application:

Network Node provider will furnish a certification that the proposed Network Node will be placed into active commercial service by or for a Network Provider not later than the 60th day after the date the construction and final testing of the Network Node is completed.
 - (2) Within sixty (60) days after construction is complete, Network Node provider will furnish a certification that the proposed Network Node is in active commercial service by or for a Network Provider and will furnish such certification with its Registration as required by Section 20-57, annually thereafter.

Sec. 20-108. Electrical Supply

Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node

facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

Network Provider shall not allow or install generators or back-up generators in the right-of-way.

Sec. 20-109. Installation and Inspections

(a) Installation.

- (1) Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the City Manager.
- (2) All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with any agreement with the City as applicable and all applicable laws, ordinances, codes, rules and regulations of the City, County, State, and the United States ("Laws").

(b) Standard Pole Load Analysis on Attachments to a Service Pole

All applications for permits to collocate and or attach to any Service Pole must have included in its permit application a completed industry standard pole load analysis performed and sealed by an engineer licensed by the State of Texas that indicates that the Service Pole to which the network node is to be attached will safely support the load. Such analysis shall also address safety of pole and attachments in regard to wind loads, collision with motor vehicle, supporting weight of the Node and all other pertinent information.

(c) Inspections

The City Manager may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the right-of-way as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager shall provide written notice to the Network Provider within five (5) business days of the planned inspection. Network Provider may have a representative present during such inspection.

(d) No installations shall be placed on the mast arm of a traffic control signal.

Sec. 20-110. Requirements in Regard to Removal, Replacement, Maintenance and Repair.

(a) Removal or Relocation by Network Provider

- (1) If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than ten (10) business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.
- (2) The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.
- (3) Any abandoned or obsolete Micro Network Node, Network Node, Node Support Pole or other related equipment shall be removed in strict accordance with this Chapter and all other applicable ordinances and state law.
- (4) Network Provider shall remove Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment when such facilities are abandoned regardless of whether or not notice is received from the City. Such removal must occur within ninety (90) days from the date of Abandonment, unless additional time is allowed by the City. The Network Provider shall provide advance written notice of such removal which must be received by the City at least two (2) working days prior to the removal, except in case of emergency. Such notice shall specify the location and description of each Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment to be removed.
- (5) The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of any City facilities and the right-of-way.

(b) Removal or Relocation Required for City Project.

A Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner in accordance with Section 20-12 and without cost to the municipality managing the public right-of-way

Pursuant to state law and as a condition for occupancy of the right-of-way, the Network Provider may be required by the City to remove or relocate any of its facilities, including but not limited to, its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the right-of-way, and Network Provider shall, at the City Manager's direction, remove or relocate the same at Network Provider's sole cost and expense, whenever the City Manager reasonably determines that the relocation or removal is needed as set out in Section 20-12.

If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager within ninety (90) days of Network Provider's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider, and Network Provider shall, within thirty (30) days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

(c) Removal Required by City for Safety or Due to Imminent Danger; or for Improper Permitting or Licensing.

Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any location under applicable law. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense.

The City Manager shall provide ninety (90) days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within thirty (30) days of receiving the invoice from the City.

(d) Restoration.

Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the right-of-way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within ten (10) calendar days following the date of such removal or relocation, at Network Provider's sole cost and expense, including

restoration of the right-of-way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable location or did the work at such location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

(e) Network Provider Responsible.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, Sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

Sec. 20-111. Requirements Upon Abandonment

Upon Abandonment or upon being deemed abandoned, Network Provider has a duty to promptly remove its facilities from the right-of-way. Notice from the City is not a prerequisite to the requirement for removal.

If the Network Provider does not promptly remove its facilities removal procedures, as set out in section 20-18, may be followed.

Sec. 20-112. General Provisions.

(a) All requirements of this Article, including Part II, shall be met as applicable.

(b) No City Allocation of Funds for Removal and Storage.

All costs of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Part, shall be the responsibility of the Network Provider and the City is not required to expend funds to meet the requirements of the Network Providers. Any funds expended by the City due to an emergency or failure of a Person to abide by these requirements shall be reimbursed to the City.

(c) Ownership.

No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the right-of-way by Network Provider will become, or be considered by the City as being affixed to or a part of, the right-of-way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the right-of-way will be, and remain, the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the right-of-way.

(d) **Size Limits.**

Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in this chapter or state law with each application, notice of work to be performed or request for a permit for each location; provided, however, where possible Providers are encouraged to reduce the size of installed facilities.

The size limits in this Article are only applicable for so long as required by state law. If Chapter 284 of the Local Government Code is found to be repealed, struck down, pre-empted or invalid, in whole or in part, the standards required by the City, either in the Municipal Authorization or an amendment to the Municipal Authorization or the directives of the City or this Article then such standards shall be subject to individualized review.

Sec. 20-113. Insurance, Indemnity, Bonding and Security Deposits.

Insurance, indemnity, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with state law.

Sec.20-114. Design Manual – Updates.

Placement or modification of Micro Network Node, Network Node, Node Support Pole and related ground equipment shall comply with the City's Design Manual at the time the Permit for Installation or Modification, and as said Design Manual may be approved or amended from time to time.

Reserved Section 20-115 through 20-150

PART IV – EXEMPTION PROCESS

Sec. 20-151. Administrative Hearing – Request for Exemption.

- (a) Should any person utilizing or proposing to utilize the right-of-way desire to request an exemption from a specific standard set forth in this Chapter, and Section 20-26 is not applicable, the person may request an Administrative Hearing before a Board of Appeals. The Zoning Board of Adjustment shall act as the Board of Appeals for a Request for Exemption under this Chapter.
- (b) Any person requesting an exemption from any of the requirements shall file such a request with the City Manager within fifteen (15) calendar days from the time that need for an exemption arose. If an exemption is requested prior to construction, the request should be submitted prior to filing for a permit.

(c) An exemption shall only be granted if:

- (1) Such exemption is not contrary to the public interest;
- (2) Such exemption will not increase the burden on the right-of-way or other right-of-way users;
- (3) Such exemption shall not increase the right-of-way management or administrative duties for City staff;
- (4) The exemption shall fit within the spirit of this Article; and
- (5) The application of the ordinance in the particular circumstances would create an unnecessary hardship.

(d) It shall take an affirmative vote of four (4) members of the Board to grant the exemption.

Section 3. That nothing in this Ordinance shall be construed to affect any prosecution currently pending, or any suit or proceeding currently proceeding in any Court, or any rights acquired or any liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance, nor shall any legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 4. That the Code of Ordinances of the City of Grapevine, Texas, shall remain in full force and effect, except as amended here and this Ordinance shall be cumulative of all provisions of ordinances of the City except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

Section 5. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Grapevine, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) or Five Hundred (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 6. That any person violating any provision of this Chapter may be issued a citation and upon conviction thereof, the person shall be deemed guilty of a misdemeanor and punished as provided in subsection 1-6 of the Code of Ordinance of the City of Grapevine. Each 24-hour period of violation, and each separate act or condition in violation of this Chapter, shall constitute a separate offense.

Section 7. It is hereby declared to be the intention of the City Council of the City of Grapevine, Texas, that sections, paragraphs, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared legally invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such legal invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the City Council of the City

of Grapevine without the incorporation in this Ordinance of any such legally invalid or unconstitutional, phrase, sentence, paragraph or section.

Section 8. The fact that the present ordinances and regulations of the City of Grapevine, Texas are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public creates an emergency which requires that this ordinance become effective from and after the date of its passage, and it is accordingly so ordained.

Section 9. This ordinance shall be in full force and effect after its passage and it is so ordained.


PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF GRAPEVINE, TEXAS on this the 15th day of August, 2017.

APPROVED:




William D. Tate
Mayor

ATTEST:


Tara Brooks
City Secretary

APPROVED AS TO FORM:


John F. Boyle, Jr.
City Attorney